REMARKS

In the Office Action mailed April 16, 2008 (hereinafter, "Office Action"), the Examiner rejected claims 1-3, 5-9, 14-17, 19-23, 28-31, 33-37, and 42-45 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2001/0047336 to Maycock, Jr. et al. (hereinafter, "Maycock") in view of U.S. Patent Application Publication No. 2002/0026348 to Fowler et al. (hereinafter, "Fowler") and U.S. Patent No. 7,092,905 to Behrenbrinker et al. ("Behrenbrinker"); and rejected claims 4, 10-13, 18, 24-27, 32, and 38-41 under 35 U.S.C. § 103(a) as being unpatentable over Maycock in view of Fowler, Behrenbrinker, and U.S. Patent Application Publication No. 2002/0069122 to Yun et al. (hereinafter, "Yun").

Based on the following remarks, Applicants respectfully traverse the rejection of claims 1-45 under 35 U.S.C. § 103(a), and request the timely allowance of the pending claims.

I. Rejection Under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 1-45 under 35 U.S.C. §103(a) as being unpatentable over the cited art because a *prima facie* case of obviousness has not been established.

The key to supporting any rejection under 35 U.S.C. § 103(a) is the clear articulation of the reasons why the claimed invention would have been obvious. Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. See M.P.E.P. § 2141, 8th Ed., Rev. 6 (Sept. 2007). "A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention." M.P.E.P. § 2145. Furthermore, "[t]he

mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" at the time the invention was made. M.P.E.P. § 2143.01(III) (internal citations omitted). In addition, when "determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious." M.P.E.P. § 2141.02(I) (internal citations omitted) (emphasis in original).

In this application, a *prima facie* case of obviousness has not been established because, among other things, the cited references do not teach or suggest, *inter alia*, "adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time," as recited in independent claim 1.

A. Claims 1-3, 5-9, 14-17, 19-23, 28-31, 33-37, and 42-45

Maycock discloses "[a] method and system for managing credit card transactions." Maycock, Abstract. According to Maycock, "an account holder [is allowed] to enter limitations used to create an authorized transaction . . . ." Id. at ¶ 0030. The steps to create an authorized transaction, as disclosed in *Maycock*, include selecting a credit card account, authorizing a credit limit for an authorized transaction, selecting a vendor or vendors, and authorizing the length of time to complete a transaction. Id. at ¶¶ 0031-0034; FIG. 4.

As admitted by the Examiner, "Maycock fails to teach adjusting one or more [fees] charged to the financial account for purchase transactions with the selected

vendor based on a number of purchase transactions with the selected vendor over a predetermined time." Office Action, p. 3.

Fowler fails to overcome the deficiencies of Maycock, as set forth above, including the failure of Maycock to disclose or suggest the claim recitations. However, according to the Examiner, "Fowler teaches combo-card wherein a transaction and/or membership card may have one or more and preferable multiple AAPs and/or other marketing programs . . . ." Office Action, p. 3. Furthermore, the Examiner states that "Fowler further teaches a rate calculation for performing transactions at specific merchants including earning points on an escalating scale . . . ." Id. Thus, the Examiner incorrectly associates Fowler's discussion of "earning points on an escalating scale" with "adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time," as recited in amended independent claim 1.

Applicants disagree with the Examiner's characterization of the cited art. Specifically, Fowler is directed towards "automated marketing programs" that implement "one or more program rules matrix modules that calculate benefits to customers based on one or more customer identifier(s), one or more merchant identifier(s) and one or more customer behavior(s)." Fowler, Abstract. Using the example of point allocation to illustrate the stated benefits, Fowler discloses that "[p]oints may be allocated in a variety of ways, such as a percentage of the transaction amount; an established ratio of points per transaction dollar; fixed points per transaction dollar; and/or minimum and/or maximum number of points per transaction, and the like." Id. at ¶ 0075 (emphasis

added). In other words, Fowler discloses the **allocation of points**, not "adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time," as recited in amended independent claim 1 (emphasis added). Accordingly, the Examiner's reliance on Fowler is misplaced

In an attempt to overcome the failure of Maycock and Fowler to disclose the claim recitations, the Examiner alleges that Behrenbrinker "teaches a system for processing financial transactions in which customer receive reduced finance charges based on transaction data associated with a particular balance segment for a particular merchant . . . ." Id. However, even assuming the Examiner's characterization of Behrenbrinker is correct, a characterization to which Applicants do not assent, Behrenbrinker fails to overcome the deficiencies of Maycock and Fowler, as set forth above, including the failure of Maycock and Fowler to disclose or suggest, *inter alia*, "adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time," as recited in independent claim 1.

Specifically, Behrenbrinker "relates . . . to systems and methods for the processing of credit card transactions." Behrenbrinker, 1:15-18. In Behrenbrinker, "[e]ach incoming transaction 34 includes transaction data 42 which identifies the customer account and details of the particular transaction." Id. at 3:56-58. "The transaction level processor 32 [of Behrenbrinker] then allocates all or a portion of the incoming transaction 34 to a particular balance segment 36 associated with [an] applicable balance rule 44." Id. at 3:61-64. Behrenbrinker discloses that "[e]ach of the

balance rules 44 include one or a plurality of variables 100 corresponding to the transaction data 42, which govern the allocation of the incoming transaction 34 to a balance segment 36." Id. at 6:10-13. "[T]ypical variables 100 include, but are not limited to, start date 102, end date 104, MCC 106, transaction amount 108, transaction type 110, merchant name 112, and merchant identification number 114." Id. at 6:15-18.

However, none of the "variables 100" or "balance rules 44," as disclosed by Behrenbrinker, discloses or suggests "adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time," as recited in independent claim 1 (emphasis added), because, among other things, Behrenbrinker's system acts on each incoming transaction individually without keeping track of the number of "number of purchase transactions," or the number that occur "over a predetermined time."

Moreover, not only does Behrenbrinker fail to disclose at least this recitation of independent claim 1, but Behrenbrinker cannot be combined with Maycock and Fowler in the manner proposed by the Examiner. The M.P.E.P. states that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention." M.P.E.P. § 2141.03(VI). When considered as a whole, Behrenbrinker teaches away from the claim recitations and the proposed combination of Behrenbrinker with Maycock and Fowler. Specifically, according to Behrenbrinker, while an incoming transaction may be included in the balance calculations of two balance segments, "**only one** set of terms and conditions

may be applied to a particular transaction." Id. at 5:28-30 (emphasis added); see id. at 5:17-18.

Thus, if the Examiner alleges that Maycock and Fowler disclose "processing purchase transactions with the selected vendor based on the first account parameter," the Examiner cannot rely upon Behrenbrinker to effectively apply a **second** set of terms and conditions by "adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time," as recited in independent claim 1. Behrenbrinker precludes this action.

Thus, not only does Maycock, Fowler, Behrenbrinker, fail to disclose or suggest all of the recitations of independent claim 1, but these references also cannot be successfully combined to result in the invention of claim 1. Therefore, the rejection of independent claim 1 under 35 U.S.C. § 103(a) is legally deficient, should be withdrawn, and the claim should be allowed.

Claims 2, 3, 5-9, 14, and 43 depend from claim 1. As explained, the cited art fails to support the rejection of claim 1 under 35 U.S.C. § 103(a). Accordingly, for at least the same reasons set forth above in connection with claim 1, and because they recite additional features not found in the cited art, the rejection of dependent claims 2, 3, 5-9, 14, and 43 is legally deficient, should be withdrawn, and the claims should be allowed.

Independent claims 15 and 29, although of different scope, include recitations similar to those of independent claim 1, and are therefore allowable for at least the same reasons set forth above. Therefore, the rejection of independent claims 15 and

29 under 35 U.S.C. § 103(a) is legally deficient, should be withdrawn, and the claims should be allowed.

Claims 16-17, 19-23, 28, and 44 depend from independent claim 15, and claims 30-31, 33-37, 42, and 45 depend from independent claim 29. As explained above, the cited art does not support the rejection of claims 15 and 29. Therefore, dependent claims 16-17, 19-23, 28, 30-31, 33-37, 42, 44, and 45 are allowable for at least the same reasons set forth above in connection with independent claims 15 and 29, and because they recite additional features not found in the cited art.

B. Claims 4 and 10-13

Claims 4 and 10-13 depend from independent claim 1 and thus require a combination including, for example, "adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time." As discussed above, Maycock, Fowler, and Behrenbrinker fail to disclose or suggest at least this element of claim 1, and they cannot be successfully combined.

The Examiner alleges Yun teaches, for example, "a financial account management system . . . ," "applying first fees . . . based on the first account parameter . . . ," "applying second fees . . . based on the second account parameter . . . ," "wherein the first and second account parameters are first and second interest rates . . . ," and "wherein the first and second account parameters include first and second finance charges . . . ." Office Action, pp. 8-9. Despite these characterizations, none of which Applicants concede, Yun fails to cure the deficiencies of Maycock, Fowler, and Behrenbrinker, as discussed above. That is, Yun also fails to teach or suggest at least

"adjusting one or more finance fees charged to the financial account for purchase transactions with the selected vendor based on a number of purchase transactions with the selected vendor over a predetermined time," as recited in independent claim 1, from which claims 4 and 10-13 depend.

Accordingly, because the prior art fails to teach or suggest each and every claim recitation of claims 4 and 10-13, and because they recite additional features not found in the cited art, the rejection of these claims under 35 U.S.C. § 103(a) is legally deficient, should be withdrawn, and the claims should be allowed.

Claims 18, 24-27 depend from independent claim 15. Claims 32 and 38-41 depend from independent claim 29. As explained, the cited art fails to support the rejection of claims 15 and 29 under 35 U.S.C. § 103(a). Accordingly, for at least the same reasons set forth above in connection with claims 15 and 29, the rejection of dependent claims 18, 24-27, 32, and 38-41 is legally deficient should be withdrawn, and the claims allowed.

II. Conclusion

In view of the foregoing amendments and remarks, Applicants submit that this claimed invention is neither anticipated nor rendered obvious in view of the cited art. Applicants therefore request reconsideration and reexamination of this application, and the timely allowance of the pending claims.

In addition, the Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statements are identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,
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